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ABSTRACT

The Committee on Manuscripts Collections of the Rare Books and Manuscripts Section prepared five statements on recurring problems which plague librarians and archivists. The topics discussed are appraisal of items donated to a library for tax purposes, obtaining legal title to gift materials, the responsibility of a library to make valuable collections known and available to qualified researchers, policies for library reproduction of manuscripts and archives for noncommercial purposes, and considerations for reproduction by commercial publishers. Also included are universal gift form and instructions which were developed by the committee to be adapted for use by individual libraries. (JAB)

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Guidelines on Manuscripts and Archives

Adopted by the Association of College and Research Libraries, a division of the American Library Association

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Introduction

It must have been in 1970 that the Committee on Manuscripts Collections of the Rare Books and Manuscripts Section of the Association of College and Research Libraries discussed the desirability of producing a series of statements which would focus upon some of the recurring problems that plague librarians and archivists. The committee believed that it was possible to review quickly a number of these problems, to identify specific points where disagreement existed, to come to general agreement as to the most reasonable, most logical resolution of the points at issue, and then to present a clear and concise statement which might well serve as a guideline for those facing similar problems.

The committee, in its innocence, had no idea of the magnitude of the job because of the wide divergence of opinions held by librarians and archivists facing identical problems. I suspect that, had it known how difficult, complex, time-consuming this task would be, it never would have attempted it at all. But the committee plunged right in and decided to prepare statements on: (1) appraisal of gifts; (2) legal title; (3) access to original research materials; (4) reproduction of manuscripts for noncommercial purposes; and (5) reproduction of manuscripts for commercial purposes. The committee further decided to prepare a "universal" gift form, a form that with minimal alteration would be suitable for use by any library.

Robert Stocking, of the Kennedy Library, was chairman of the committee when the work began, and when his term expired I followed him in that office. Howard Applegate, then at Syracuse University and now at the Balch Institute, did the initial drafting of many of the statements. Robert Adelsperger, Head of Special Collections at the University of Illinois at Chicago Circle, did the first draft of the "universal" gift form. After a draft had been prepared, it was sent to each member of the committee and studied word by word, comma by comma. A redraft was then circulated and reviewed until all agreed upon a single version.

The committee was in touch with the Society of American Archivists and with the Association of Research Libraries, since both of these organizations were interested in developing guidelines for these and related topics. In most cases we were in substantial agreement, but in the end it was not possible to reconcile fully all divergent points of view into a single statement that all would adopt.

After the lengthy process of approving a statement was finished, the committee brought the statement to the Board of Directors of the Association of College and Research Libraries for permission to publish it as a draft in *College & Research Libraries News*, with a request for written comments and suggestions. The committee reviewed each written comment and then sent the statement in final form to the ACRL Board for approval.

The end product of the committee's work follows this brief introduction. The committee plans to review each of these statements on a regular basis, to be certain that they are kept current.

Your comments and criticisms are invited.

Clyde C. Walton
Chairman (1973/1976)
Committee on Manuscripts Collections
Rare Books and Manuscripts Section
Association of College and Research Libraries

Statement on Appraisal of Gifts

Developed by the Committee on Manuscripts Collections of the Rare Books and Manuscripts Section of the Association of College and Research Libraries. Approved as policy by the ACRL Board of Directors in February 1973. This statement supersedes and replaces the 1960 ACRL policy on appraisal (published in Antiquarian Bookman, *v.26, December 19, 1960, p.2205).*

1. The appraisal of a gift to a library for tax purposes generally is the responsibility of the donor since it is the donor who benefits from the tax deduction. Generally, the cost of the appraisal should be borne by the donor.

2. The library should at all times protect the interests of its donors as best it can and should suggest the desirability of appraisals whenever such a suggestion would be in order.

3. To protect both its donors and itself, the library, as an interested party, ordinarily should not appraise gifts made to it. It is recognized, however, that on occasion the library may wish to appraise small gifts, since many of them are not worth the time and expense an outside appraisal requires. Generally, however, the library will limit its assistance to the donor to: (a) providing him with information such as auction records and dealers' catalogs; (b) suggestions of appropriate professional appraisers who might be consulted; (c) administrative and processing services which would assist the appraiser in making an accurate evaluation.

4. The acceptance of a gift which has been appraised by a third, and disinterested party, does not in any way imply an endorsement of the appraisal by the library.

5. An archivist, curator, or librarian, if he is conscious that as an expert he may have to prove his competence in court, may properly act as an independent appraiser of library materials. He should not in any way suggest that his appraisal is endorsed by his library (such as by the use of the library's letterhead), nor should he ordinarily act in this fashion (except when handling small gifts) if his institution is to receive the donation. ■■

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Statement on Legal Title

Developed by the Committee on Manuscripts Collections of the Rare Books and Manuscripts Section of the Association of College and Research Libraries. Approved as policy by the ACRL Board of Directors in February 1973.

1. Every library should acquire proper and legal title to all gifts of books, manuscripts, and other materials, which have significant monetary value. It is recognized, however, (a) that it is often impossible to acquire title to collections many years after they have been received by the library; (b) that frequently, where small collections of materials are involved, the donor may not be certain exactly where title rests; and (c) that when single items or very small collections are involved, donors often do not wish to become involved in library gift procedures.

2. Many libraries still accept temporary deposits. As a general principle, such gifts ordinarily should not be accepted unless (a) the library has reason to believe that a temporary deposit is the only way in which the material is likely to be preserved; or (b) the library has reason to believe that a temporary deposit will in time be changed to a permanent gift; or (c) except where ownership of corporate records is governed by state and/or federal regulations.

3. Ordinarily transfer of legal title by gift is accomplished by a properly executed form, variously described as "Instrument of Gift" or "Certificate of Gift." This form should include the following: (a) name and address of the donor; (b) description of the gift; (c) statement of transfer of legal title, and where possible and applicable, copyrights and literary rights; (d) any restrictions; (e) directions concerning disposal of unwanted items.

The form must be (1) signed and dated by the donor and (2) witnessed and dated by another party who is neither related to the donor nor employed by the institution receiving the gift.

An additional evidence of proof would be the notarization of the donor's and witnesses' signatures. ■■

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Statement on Access to Original Research Materials in Libraries, Archives, and Manuscript Repositories

Developed by the Committee on Manuscripts Collections of the Rare Books and Manuscripts Section of the Association of College and Research Libraries. Approved as policy by the ACRL Board of Directors in July 1976. This statement supersedes and replaces the 1974 ACRL "Statement on Access to Original Research Materials in Libraries, Archives, and Manuscript Repositories" (published in College & Research Libraries News, *May 1974, p.114).*

1. It is the responsibility of a library, archives, or manuscript repository to make available to qualified researchers, as defined by the respective institutions, on equal terms of access, research materials in its possession, unless prohibited by the regulations of the institution. Because the accessibility of material depends on knowing of its existence, it is the responsibility of a repository to inform researchers of the collections in its custody by means of a public catalog, inventories, other finding aids, published guides, and reports to the National Union Catalog where appropriate. Staff members should assist researchers as freely as possible but should not be expected to engage in extended research.
2. To protect and insure the continued accessibility of the materials in its custody, the repository may impose several conditions, which it should publish or otherwise make available to users.
   a. The repository may restrict the use of fragile or unusually valuable materials. In such cases it should make available suitable reproductions whenever possible.
   b. All materials must be used in accordance with the regulations of and under the supervision of the repository. Each repository should publish and furnish to potential researchers its regulations governing access and use. Such regulations must be equally applied and enforced.
   c. The repository may refuse access to unprocessed materials, so long as such refusal is equally applied and enforced.
   d. Normally, a repository will not send research materials for use outside its building or jurisdiction. Under special circumstances a collection or a portion of it may be loaned or placed on deposit with another institution.
   e. The repository may refuse access to an individual researcher who in the opinion of the staff has demonstrated such carelessness or deliberate destructiveness as to endanger the safety of the material, or who has refused to comply with the regulations of the repository.
   f. As a protection to the collections, a repository may reasonably require acceptable identification of persons wishing to use its materials, as well as a signature indicating they have read a statement defining the policies and regulations of the repository.
3. Each repository should make available to researchers a suggested form of citation crediting the repository and identifying items within the collection for later reference. Citations to copies of the originals which are in other repositories should include the location of the originals, if known.
4. A repository should advise the researcher that he and his publisher have the sole responsibility for securing permission to publish from unpublished manuscripts in which literary property rights are retained or to publish extensive quotations from copyrighted works.
   Manuscripts cannot be used for publication without due regard for common law rights, literary rights, property rights, and libel laws. The user assumes legal responsibility for observing these rights. A repository should, to the best of its ability, inform the researcher about known retention of literary rights.
5. A repository should not deny access to materials to any person or persons, or conceal the existence of any body of material from any researchers, unless required to do so by law, donor, or purchase stipulations.
6. A repository should not charge fees for the noncommercial use of its collection.
7. With the written acquiescence of the scholar involved, a repository should,

whenever possible, inform a researcher of parallel research by other individuals using the same reports.

8. Repositories are committed to preserving manuscript and archival materials and to making them available for research as soon as possible. At the same time, it is recognized that every repository has certain obligations to protect confidentiality in its records in accordance with law and that every private donor has the right to impose reasonable restrictions upon his papers to protect confidentiality for a reasonable period of time.
   a. It is the responsibility of the repository to inform researchers of the restrictions which apply to individual collections or record groups.
   b. The repository should discourage donors from imposing unreasonable restrictions and should encourage a specific time limitation on such restrictions as are imposed.
   c. The repository should periodically reevaluate restricted records and work toward providing free access to material. ■ ■

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Statement on the Reproduction of Manuscripts and Archives for Noncommercial Purposes

Developed by the Committee on Manuscripts Collections of the Rare Books and Manuscripts Section of the Association of College and Research Libraries. Approved as policy by the ACRL Board of Directors in July 1976. This statement supersedes and replaces the 1974 ACRL "Statement on the Reproduction of Manuscripts and Archives for Noncommercial Purposes" (published in College & Research Libraries News, *May 1974, p.115).*

1. It is the responsibility of a library, archives, or manuscript repository within the limits of its resources to assist qualified researchers, as defined by the respective institutions, by making or having made reproductions of any material in its possession, subject to certain conditions.
   Manuscript and archival materials may be reproduced if:
   a. the condition of said materials will permit such reproduction without damage;
   b. the said materials have no gift, purchase, or legal restrictions on reproductions;
   c. the holders of appropriate common law or statutory rights have given their written approval for said reproductions.

2a. In the interest of making research collections more generally available, the orderly copying of entire manuscript collections together with appropriate guides, within the provisions of law, is to be encouraged. Also in the interest of making manuscript items available to researchers, the custom and practice among libraries of making one "fair use" copy of a manuscript that is not otherwise restricted is to be encouraged to the fullest extent permitted by law.

2b. All conditions relating to use of manuscript and archival material shall apply to the use of the reproductions.

3. A repository has the right to refuse to furnish copies or do extended research in response to requests which require an unreasonable amount of time with respect to the priorities of the repository.

4. The price of reproductions shall be set by the repository, which should endeavor to keep charges to a minimum.

5. Copies should be made for the use of individual researchers and educational institutions as follows:
   a. Repositories which permit their manuscript and archival collections to be reproduced in whole or part must specify before the copies are made what restrictions, if any, have been placed on the use of the copies. Purchasers must abide by these restrictions.
   b. All reproductions must identify the source of the original manuscript collection or archival record group.
   c. Copies of reproductions should not be made for a third party by the owner of a reproduction without the written permission of the repository owning the originals.

6. In order to insure (1) that proper credit is given to institutions and (2) that references to original materials are maintained, the repository must inform researchers that they are expected to cite the source of original manuscripts and archives in their published work.

7. Manuscripts, or reproductions of them, cannot be used for publication without due regard for copyright and other legal restrictions. Researchers assume legal responsibility for observing these rights. A repository should inform researchers concerning known retention of literary rights, as well as all other known restrictions. ■■

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Statement on the Reproduction of Manuscripts and Archives for Commercial Purposes

Developed by the Committee on Manuscripts Collections of the Rare Books and Manuscripts Section of the Association of College and Research Libraries. Approved as policy by the ACRL Board of Directors in January 1977.

1. It is the responsibility of libraries, archives, or manuscript repositories to facilitate access to original collections by permitting commercial publishing companies to reproduce, reprint, or otherwise publish certain collections in their possession, unless:
   a. the physical condition of the originals prohibits reproduction;
   b. there are legal restrictions which prohibit or limit reproduction of the originals.
2. No repository shall be expected to reproduce a complete manuscript collection or archival record group.
3. The commercial publisher shall agree to the following conditions:
   a. **Permission.** (1) The publisher shall be responsible for compliance with all copyright and other legal requirements applicable to reproduction of the material borrowed and will obtain (and will deliver to the repository a duplicate executed counterpart of) all such consents, licenses, and other instruments as may be necessary for such compliance. (2) The publisher shall agree to indemnify and hold harmless the repository, its officers and employees, any and all of them, against and from any liability, loss, cost or expense whatsoever, including attorney's fees, which the repository, its officers and employees, any and all of them, may at any time incur arising out of or relating to the reproduction of any of its manuscripts or other original material.
   b. **Acknowledgment.** The publisher shall cause the reproduction of any manuscript collection or archival record group to show that it has been made from an original in the library of the owning repository in the form specified by the repository.
   c. **Quality of Reproduction.** The publisher shall cause his reproduction to be of a quality satisfactory to the repository from which he has borrowed the originals. A hard copy reproduction should meet current minimal standards for binding and paper as formulated by the Library of Congress and by the Resources and Technical Services Division, a division of the American Library Association. If published on microfilm, the reproductions shall meet the minimum specifications in *Specifications for the Microfilming of Books and Pamphlets in the Library of Congress* (Washington, D.C., Library of Congress, 1973). In addition, the following American national standards, published by the American National Standards Institute, shall be adhered to:
      1. *Specifications for Safety Photographic Film*, ANSI PH1.25–1974.
      2. *Methylene Blue Method for Measuring Thiosulfate and Silver Densitometric Method for Measuring Residual Chemicals in Films, Plates, and Papers*, ANSI PH4.8–1971.
      3. *Specifications for 16mm and 35mm Silver Gelatin Microfilms for Reel Applications*, ANSI PH5.3–1967 (R-1973).
      4. *Practice for Storage of Processed Silver Gelatin Microfilm*, ANSI PH5.4–1970.
      5. *Dimensions for 100-Foot Reels for Processed 16mm and 35mm Microfilm*, ANSI PH5.6–1968 (R1974).
      6. *Microfiche of Documents*, ANSI PH-5.9–1975.
      7. *Microfilm Package Labeling*, ANSI PH5.19–1975.
      8. *Practice for Inspection and Quality Control of First Generation Silver Halide Microfilm*, ANSI PH5.23.
      9. *Operational Procedures for the Production of Microforms*, ANSI PH5.24.
   d. **Reproduction.** The owning repository shall specify when and where the reproductions are to be made and the conditions under which they will be made.
   e. **The Original.** (1) The publisher will not permit original manuscripts or other archival materials to suffer physical damage while in his care. Should damage occur, all repairs are to be made by qualified conservators chosen by the owning repository and at the expense of the publisher. (2) If the archival or manuscript

materials are damaged beyond repair, the publisher must return the materials to the owning repository and reimburse the owning repository at the value set by an independent appraiser who is jointly selected and therefore satisfactory to both the publisher and the owning repository. The publisher must pay the appraiser's fee.

f. **Royalties.** The owning repository shall receive from the publisher (1) an agreed royalty which has been established in advance by legal contract and (2) a sufficient number of copies of the publisher's reproduction for the repository's internal use.

g. **Restrictions.** The publisher must respect any restrictions placed upon reproductions or copies of original manuscripts or archival materials furnished to him.

h. **Pricing.** The publisher shall agree to market his reproductions using a nondiscriminating price structure.

4. a. Both the owning repository and the publisher must inform purchasers of reproductions that permission to make extensive direct quotations or to print any reproduction in full must be obtained from the owning repository. Every reproduction must bear a clear statement to this effect.

   b. Manuscripts must not be published without due regard for literary property rights (also known as common law rights), personal property rights, libel, and unwarranted invasions of privacy. ■■

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Universal Gift Form and Instructions

Developed by the Committee on Manuscripts Collections of the Rare Books and Manuscripts Section of the Association of College and Research Libraries. Approved as policy by the ACRL Board of Directors in January 1975.

UNIVERSAL GIFT FORM

[Board of Trustees of the
Anonymous Athenaeum]

I/We hereby give, transfer, and deliver all of my/our right, title and interest in and to the property described below to the [Board of Trustees of the Anonymous Athenaeum] as an unrestricted gift and dedicate to the public without restriction and thereby place in the public domain whatever literary rights I/we may possess to this property.

Dated this ___ day of _____, 19__:

1. _____
Signature
_____
Address

2. _____
Signature
_____
Address

3. _____
Signature
_____
Address

The [Board of Trustees of the Anonymous Athenaeum] hereby accepts and acknowledges as an unrestricted gift to the [Library of the Anonymous Athenaeum] the collection described below and agrees to administer it in accordance with its established policies.

Dated this ___ day of _____, 19__:

Accepted by: _____
Signature
_____
Title

Description of the collection: _____
_____
_____
_____

GENERAL INSTRUCTIONS
FOR UNIVERSAL GIFT FORM

Any deed of gift, or letter, if it incorporates the necessary elements, is a legally recognized document which effectively transfers title for manuscripts or other items from a donor to a receiving institution. Such deed of gift formalizes the transaction and makes explicit the agreement between the parties. Certain elements must be part of any such deed of gift but additional variations are possible. They will depend on the nature of the gift, the desires of the two parties as expressed in the verbal agreement between them, and the need to spell out any unique conditions and/or restrictions placed on the material. The following elements, however, are considered basic: (1) the date of execution, (2) the name of the donor, (3) a description of the items transferred, (4) the signature of the donor, and (5) acceptance of ownership and responsibility by the institution as evidenced by a statement to that effect and an authorized signature.

It must be understood that an intention on the part of the donor to give material, its acceptance by the institution, and the recording of that agreement and transfer in some written document constitute a transfer only of the physical property. Literary rights to the material remain with the party to whom they belong, and this may, or may not, be the donor of the material. It is generally considered desirable at the time of transfer to acquire whatever literary rights the donor possesses, but it is necessary to include a statement covering such transfer in the deed of gift, if this is to be effected. An institution may elect to have those rights transferred to the institution itself or it may include a statement specifically dedicating them to the public.

The question as to whether one should include a place for possible restrictions with regard to access to materials in a form developed to serve as a deed of gift is a knotty one. It is sometimes considered unwise to trigger the imposition of restrictions which might not otherwise occur to a donor. On the other hand, there may be certain situations which suggest, or indeed call for, restrictions, and it would be remiss of a curator not to point this out.

In general, however, the interests of the institution and its patrons will be best served by transferring the material in a manner which provides the widest leeway for the institution in the administering and servicing of the manuscripts. This will usually call for a simple and straightforward deed of gift, and it is that basic form which is suggested here, with the proviso that the institution and the curator must be aware of the range of possible variations.

It should also be pointed out that not only will the requirements vary with different institutions and with each individual gift, but also

there may be a considerable variance in local legal requirements, and these will need to be checked. It would seem to be a cardinal rule that an institution or curator should seek some legal advice before instituting and using a form as a deed of gift. It should also be recognized that no form will cover every situation, and it will at times be necessary to draw up a document tailored specifically to the requirements of a particular case.

Although some institutions will include other matters in a deed of gift, there are advantages to keeping the form as relatively brief and uncomplicated as possible. Such matters as (1) the disposition of unwanted material or duplicates, (2) the handling of printed material, (3) the photoreproduction of the material for scholarly use, (4) the handling of publicity, and (5) the mechanism for permission to publish should be handled through correspondence or by other means.

If it is likely that in the future there will be additional material donated which is related to the initial gift, the deed of gift might properly speak to that matter. If restrictions are agreed on between the donor and the recipient and stated in the agreement, there should also be stated a terminal date and an understanding of where the authority for continuation or removal of those restrictions lies in the event of the donor's death.

All of these comments as well as the sample deed of gift refer to situations in which the physical property is being given outright to the institution, whether or not the literary rights in the possession of the donor accompany and are part of the gift. There are, of course, situations in which a donor merely wishes to deposit the material in an institution. In such cases the understanding is usually that outright donation will generally follow, but the curator must be aware that it is in no way inevitable. In such cases the offer should be scrutinized carefully and matters such as the availability of his material for scholarly use, photoreproduction, and publication should be accurately understood between the donor and the institution. An entirely separate agreement of deposit which speaks to the necessary points should be developed and executed in the rare cases where such deposit is acceptable to the institution and outright gift of the material at the time does not seem possible. ■ ■

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